

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

TYRONE FURGESON and MYONG  
FURGESON, husband and wife; MYONG &  
SUNG, LLC, a Washington limited liability  
company d/b/a THE BROWNE'S STAR  
GRILL; and CONSTITUTIONALIST  
SERVICES, LLC, a Washington limited  
liability company d/b/a ESYONGS SECURITY  
AND CANINE,

Plaintiffs,

v.

CITY OF TACOMA, a municipal corporation;  
GREG HOPKINS and "JANE DOE"  
HOPKINS, husband and wife, and the marital  
community thereof; ROBERT LUKE and  
PEGGY CAMPOS-LUKE, husband and wife,  
and the marital community thereof; PHIL  
FERRELL and DEBBIE FERRELL, husband  
and wife, and the marital community thereof;  
NICK STEPHENS and BOBBIE STEPHENS,  
husband and wife, and the marital community  
thereof; RUBEN CARTER and DARLENE  
CARTER, husband and wife, and the marital  
community thereof; DUANE KNOLL and  
ROXANN KNOLL, husband and wife, and the  
marital community thereof; and BRIAN  
TRUNK and "JANE DOE" TRUNK, husband  
and wife, and the marital community thereof,

Defendants.

Case No. C05-5490FDB

ORDER GRANTING DEFENDANT  
CITY OF TACOMA'S MOTION FOR  
SUMMARY JUDGMENT ON  
PLAINTIFFS' § 1983 MUNICIPAL  
LIABILITY CLAIMS

## INTRODUCTION

This cause of action arises from a July 25, 2002 inspection of the Browne's Star Grill building by a building inspector from the City's Building and Land Use Services Department, a fire inspector from the Tacoma Fire Department, and an electrical inspector from Tacoma Power. Plaintiff Tyrone Furgeson allowed the inspection, stating, "Be my guest." (Ex. 1, p. 142.) Following the inspection, the team concluded that the hazards were such that abatement was the appropriate action and cut electrical power to the building and a "Do Not Occupy" notice was posted on the bar and grill on the same day, July 25, 2002. The necessary repairs were made by Plaintiffs and, following re-inspections by the City, Browne's Star Grill reopened on September 6, 2002.

Defendants move for Summary Judgment on Plaintiffs' Section 1983 Municipal Liability Claim.

## SUMMARY JUDGMENT STANDARD

Summary judgment is proper if the moving party establishes that there are no genuine issues of material fact and it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). If the moving party shows that there are no genuine issues of material fact, the non-moving party must go beyond the pleadings and designate facts showing an issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-323 (1986). Inferences drawn from the facts are viewed in favor of the non-moving party. *T.W. Elec. Service v. Pacific Elec. Contractors*, 809 F.2d 626, 630-31 (9<sup>th</sup> Cir. 1987).

Summary judgment is proper if a defendant shows that there is no evidence supporting an element essential to a plaintiff's claim. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). Failure of proof as to any essential element of plaintiff's claims means that no genuine issue of material fact can exist and summary judgment is mandated. *Celotex*, 477 U.S. 317, 322-23 (1986). The nonmoving party "must do more than show there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

**DISCUSSION**

In order for the City of Tacoma to be liable under 42 U.S.C. § 1983, a plaintiff must show that the alleged injuries were inflicted pursuant to a governmental custom, policy, or practice. *Bryan County v. Brown*, 520 U.S. 397 (1997). A plaintiff must prove that (1) the plaintiff possessed a constitutional right of which he or she was deprived; (2) that the municipality had a policy; (3) that this policy ‘amounts to deliberate indifference’ to the plaintiff’s constitutional rights; and (4) that the policy is the ‘moving force behind the constitutional deprivation. *Van Ort v. Estate of Stanewich*, 92 F.3d 831, 835 (9<sup>th</sup> Cir. 1996).

For purposes of Section 1983 liability, an ‘official policy’ is “[a] policy statement, ordinance, regulation or decision that is officially adopted and promulgated by the municipality’s lawmaking officers or by an official to whom the lawmakers have delegated policy-making authority.” *Brown v. Bryan County*, 219 F.3d 450, 457 (5<sup>th</sup> Cir. 2000). A custom is “[a] persistent, widespread practice of city officials or employees, which, although not authorized by officially adopted and promulgated policy, is so common and well-settled as to constitute a custom that fairly represents municipal policy.” *Id.* A plaintiff basing his claim on a custom must produce evidence of a widespread pattern of conduct that can fairly be attributed to the City. *Wellington v. Daniels*, 717 F.2d 932, 936 (4<sup>th</sup> Cir. 1983). A plaintiff must present evidence of other incidents, involving similarly situated people or circumstances, which were met with the same indifference claimed in the plaintiff’s own situation. *Fiacco v. City of Rensselaer, New York*, 783 F.2d 319 (2<sup>nd</sup> Cir. 1986).

Plaintiffs assert in their response that

... the City’s Drug House Elimination Task Force is a multi-departmental creation comprised of a municipal team of police, public utilities, fire, health, tax and licensing, road use and legal advisors. (Aff. Of Frohlich, Ex.4). The Drug House Elimination Task Force’s primary program strategy is to conduct code enforcement inspections of problem locations. Code enforcement proceedings are commenced at locations where the Drug House Elimination Task Force determines that the owner has not been proactively fighting crime or is connected to illegal activity.


(Plaintiffs’ Response pp. 5-6.) Plaintiff further asserts that owners then are forced to sell or residents

1 to move, that this weakens and eradicates the criminal element, and the use of the Task Force to do  
2 this reduces delays when traditional municipal channels are used. This policy, argue Plaintiffs,  
3 violated their constitutional rights.

4 Plaintiffs have failed to demonstrate municipal liability pursuant to 42 U.S.C. § 1983 as to the  
5 City of Tacoma. There has been no demonstration that Plaintiffs were deprived of a constitutional  
6 right. (See Court's Order Granting Defendants Summary Judgment on Plaintiffs' Section 1983 and  
7 1985 claims, and claims under the Fourth, Fifth, and Fourteenth Amendments of the United States  
8 Constitution.) While Plaintiffs point to the efforts of the Drug Housing Elimination Task Force,  
9 there is no showing that the conduct of this Task Force amounts to "deliberate indifference" of  
10 Plaintiffs' constitutional rights. Accordingly, Defendants' motion with respect to the City of  
11 Tacoma's motion for summary judgment on the municipal liability claims must be granted. NOW,  
12 THEREFORE,

13 IT IS ORDERED: Defendant City of Tacoma's Motion for Summary Judgment on Plaintiffs'  
14 Section 1983 Municipal Liability Claim [Dkt. # 31] is GRANTED, and Plaintiffs' Section 1983  
15 claims against the City of Tacoma are DISMISSED in their entirety with prejudice.

16  
17 DATED this 17<sup>th</sup> day of November, 2006.

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20 FRANKLIN D. BURGESS  
21 UNITED STATES DISTRICT JUDGE  
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